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LOK SABHA

The following Report of the Select Committee on the Bill to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities:—

Composition of the Select Committee

1. Shri R. Venkataraman—*Chairman.*
2. Shri N. M. Lingam
3. Dr. Suresh Chandra
4. Shri Ganesh Sadashiv Altekar
5. Shri Basanta Kumar Das
6. Shri Ghamandi Lal Bansal
7. Shri Radheshyam Ramkumar Morarka
8. Shri Bhagwat Jha 'Azad'
9. Shrimati Tarkeshwari Sinha
10. Shri Tribhuan Narayan Singh
11. Shri Raichand Bhai N. Shah
12. Shri Nandlal Joshi
13. Shri Chaudhri Muhammed Shaffee
14. Shri Bishwa Nath Roy
15. Shri Khushi Ram Sharma
16. Shri Debeswar Sarmah
17. Shri Banarsi Prasad Jhunjhunwala
18. Pandit Thakur Das Bhargava

19. Shri Narendra P. Nathwani
20. Shri Shivram Rango Rane
21. Shri Tek Chand
22. Shri Tulsidas Kilachand*
23. Shri Asoka Mehta
24. Shri M. S. Gurupadaswamy
25. Shri Shankar Shantaram More
26. Shri A. M. Thomas
27. Shri U. M. Trivedi
28. Shri Kamal Kumar Basu
29. Shri Tushar Chatterjea
30. Shri D. P. Karmarkar
31. Shri T. T. Krishnamachari.

DRAFTSMAN

Shri S. K. Hiranandani, *Additional Draftsman, Ministry of Law.*

SECRETARIAT

Shri P. K. Patnaik, *Under Secretary.*

Report of the Select Committee

I, the Chairman of the Select Committee to which the Bill† to provide, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities was referred, having been authorised to submit the report on their behalf, present their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 2nd March, 1955 and was referred to a Select Committee on the 5th March, 1955 on the motion being adopted by the House.

3. The Committee held four sittings in all.

4. The first sitting of the Committee was held on the 11th March, 1955 to draw up a programme of work.

5. The Committee took up clause by clause consideration of the Bill at the second and third sittings held on the 12th and 14th March, 1955 respectively.

*Resigned.

†Published in Part II-Section 2 of the *Gazette of India, Extraordinary*, dated the 2nd March, 1955.

6. The Committee considered and adopted the report on the 15th March, 1955.

7. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

8. *Clause 3.*—The Committee have added a new sub-clause to provide for the laying of every order made by the Central Government, as soon as may be after it is made, before both the Houses of Parliament.

9. *Clause 7.*—The Committee feel that for minor offences the punishment of imprisonment extending to three years is excessive. In their opinion, for contravention of orders relating to supply of information, maintenance and production of documents etc., punishment of imprisonment upto one year would meet the ends of justice.

Sub-clause (1) has, therefore, been amended accordingly.

A small drafting amendment has been made in sub-clause (2) so as to make it clear that the directions referred to therein are directions given by the authorised controller.

10. The Committee have noted the assurance given by the Minister of Commerce and Industry that all orders made under section 3 of this Act shall from time to time be placed before the Informal Consultative Committee for the Ministry of Commerce and Industry.

11. The Select Committee recommend that the Bill as amended be passed.

R. VENKATARAMAN,

Chairman.

Select Committee.

NEW DELHI;

The 15th March, 1955.

Minutes of Dissent

I

The Essential Commodities Bill of 1955 is, no doubt, an improvement on the old Act which was essentially a war measure. Many defects were noticed in its application from time to time.

In the present Bill, in clause 3, the word "order" has been used, which I wish to be modified into "notified order". This would save

mental worry to the Government officials concerned as well as to the public against whom such orders may be used.

The provision in clause 7 requires further consideration. Making the contravention of any order punishable with an imprisonment which may extend to three years coupled with a liability to fine which may exceed even Rs. 1,000 is a very harsh provision of law, when it is remembered that the liability in cases under the Essential Commodities Bill is absolute and *mens rea* is ruled out. This provision of three years' imprisonment is at times interpreted by the lower judiciary as a cognisable and non-bailable offence.

Clause 9 provides for the special liability by corporate bodies. It is an unusual departure from the modern concept of criminal law that a criminal action will always be a personal liability. This puts a discount on the desire of a capable man handling an important industry, and the departure from the usual principles of criminal law is not called for. A suitable amendment is necessary if this clause is to be retained at all. The responsibility must be of the person on whom an order of the nature contemplated under clause 7 can be legally served and others who can be responsible in a vicarious nature ought not to be held responsible; when even under an action for tort, fixing of the liability would be a debatable problem.

I shall also draw attention to the provisions in clause 15 about the repeal and savings. Clause 15 (2) is likely to create difficulties in the continuation of orders made under the Essential Supplies (Temporary Powers) Act of 1946 and needs to be suitably amended.

U. M. TRIVEDI

NEW DELHI:

The 15th March, 1955.

II

Under the present bill the power is sought by the Government to control certain commodities in the interests of the general public which are considered essential to the life of the common people. A similar Act was already in existence since 1946. As there was limitation of the legislative power of the Central Government the old Law lapsed early in January, 1955 and the Central Government through its ordinance making powers continued the controlling power over those articles or commodities in respect of which it was competent to do so. Since then the Constitution was amended and the Centre took powers to legislate in respect of certain commodities such as foodstuffs and cattle fodder which were originally in the

State List. As we had stated at the time of the amendment of the Constitution such power of control and regulation should have been left to the respective State Governments to decide and impose.

However, we feel and agree that certain controlling powers in respect of the articles and commodities whose production and movements are vital and essential to the life of the community should remain with the Government and they should use them justly and judicially for the ends of social justice. We are however alive to the danger of such wide and sweeping powers to the executive and their likely misuse as we are reluctantly to conclude from past experience. That, we suggest, can be prevented by improving the administering of the executive power under the Act true to the spirit and letter of the law. We, therefore, generally support the provision of the bill and also the report of the Select Committee.

We, however, most reluctantly put our points of difference and reasons therefor as enumerated below.

Clause 2.—We want to add the commodities like 'Jute product' and 'Tea' which we consider so vital to the life of a very large section of our people. There is no point in leaving out 'Jute product' when 'Jute fibre' is included. Jute and Tea industries are controlled by British capitalists and the Indian monopolists and big business have often to face the vicissitudes of a fluctuating market which are often created by these traders and businessmen, and the ill-paid workers and the poor consumers are made to suffer for such fluctuations. We feel that the provisions of the Tea Act or the Industries Development and Regulation Act under which Jute products can be controlled are not adequate. At least from the experience of the past few years we come to the same conclusion, as, during crisis or any adverse fluctuation in the trade, the interests of workers and the consumers could not be protected. Therefore they should be included in clause 2 for meeting the ends of social justice.

Moreover, when 'component parts and accessories of automobiles' have been included in the meaning of 'Essential Commodity' there is no reason why 'cycle parts' should be left out. From the point of view of necessity, cycle is more an essential commodity than automobile. We also feel that essential medicines too should be included in the list.

In the present bill 'mica' is dropped from the list of essential commodities. We are told that as the importance of mica is only related to the export trade it is not found necessary to include the same. We know how the mica trade is controlled and influenced by a small section of people. The government on many occasions

have expressed their inability to stop certain acts of the small mine-owners or the traders. We are therefore of opinion that 'mica' should remain in the list of enumerated 'Essential Commodities'.

Clause 9(2).—We want to add the words "and that he or they has or have made deliberate or diligent effort to prevent such contravention" after the words "other officer of the company". We want to make this addition to prevent the real bosses of the corporation or company from escaping the penal provision and putting up a "dummy" to face the punishment. Unless the Government is in a position to haul up these big persons the people will not accept the *bona fides* of the Government in working this Act in the interests of the common man and general well-being of the community.

KAMAL KUMAR BASU
TUSHAR CHATTERJEA

NEW DELHI;

The 15th March, 1955.

III

The Committee have been pleased to accept my amendment in respect of lowering of punishment from three years' imprisonment to one year's imprisonment in respect of offences related to (h) and (i) of clause 7. It is unfortunate that I could not convince the Committee that the punishment in these cases should be imprisonment or fine or both and no reasons need necessarily be given by the Court why it has not given sentences of imprisonment. The present provision gives a specific direction that imprisonment is to be given necessarily in these cases also though for reasons recorded it may not be given. I wished that the Courts were free to deal with the accused under these two clauses.

I am sorry that I did not succeed in another amendment of mine, namely, nomination by the company of a responsible or principal man in the company to become accountable and responsible for the enforcement of all directions and orders of the Government in relation to clause 3 of the Bill. The present provision will not work satisfactorily. It includes a large number of persons from whom it may be difficult to select the real offender. Any number of persons will be in charge of the conduct of business or affairs of the company. There are manifold departments and branches of administration and business in the company. The present provision is therefore vague and unworkable. The fear is that dummies may be nominated. Against this fear we can have the safeguard that Government will only accept the nomination if it is satisfied that the

managing director or other really responsible person has been nominated. If any special person is nominated he shall certainly look to the proper compliance of the direction and the object of the law will be best served by proper compliance and enforcement of the order and direction and not by punishment of any of the persons who may possibly be in charge of the conduct of the affairs of the company.

Further I do not want that neglect in the part of directors, secretary or other officers should be penalised. The punishment of imprisonment for three years is a serious matter. In penal laws it is unusual to penalise mere neglect unless such neglect is of culpable or serious nature and the results of such neglect are disastrous. In neglect there is no *mens rea* which is usually regarded as an essential element in crimes. It is wrong to assume that neglect is being condoned. It may have other consequences except prosecution for an offence entailing three years' imprisonment. If a person does his work in a *bona fide* manner and with honesty his neglect usually does not savour of crime. I would therefore urge that the word "neglect" be omitted or at least serious or culpable neglect be penalised and the punishment awardable for such neglect be modulated or reduced.

THAKUR DAS BHARGAVA

NEW DELHI;

The 15th March, 1955.

THE ESSENTIAL COMMODITIES BILL, 1955

(AS AMENDED BY THE SELECT COMMITTEE)

(Words sidelined or underlined indicate the amendments suggested by the Committee)

BILL NO. 6 A OF 1955

A Bill to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Essential Commodities Act, short title and extent.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) 'essential commodity' means any of the following classes of commodities:—

(i) cattle fodder, including oilcakes and other concentrates;

(ii) coal, including coke and other derivatives;

(iii) component parts and accessories of automobiles,

(iv) cotton and woollen textiles;

(v) foodstuffs, including edible oilseeds and oils;

(vi) iron and steel, including manufactured products of iron and steel;

(vii) paper, including newsprint, paperboard and straw board;

(viii) petroleum and petroleum products;

(ix) raw cotton, whether ginned or unginned, and cotton seed;

(x) raw jute;

(xi) any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of entry 33 in List III in the Seventh Schedule to the Constitution;

(b) 'food-crops' include crops of sugarcane;

(c) 'notified order' means an order notified in the Official Gazette;

(d) 'State Government' in relation to a Part C State means the Lieutenant Governor or the Chief Commissioner, as the case may be.

Powers to control production, supply, distribution, etc., of essential commodities. 3. (1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

- (b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;
- (c) for controlling the price at which any essential commodity may be bought or sold;
- (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;
- (e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;
- (f) for requiring any person holding in stock any essential commodity to sell the whole or a specified part of the stock to such person or class of persons and in such circumstances as may be specified in the order;
- (g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles which, in the opinion of the authority making the order are, or, if unregulated, are likely to be, detrimental to the public interest;
- (h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;
- (i) for requiring persons engaged in the production, supply or distribution of, or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;
- (j) for any incidental and supplementary matters, including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licences, permits or other documents, and the charging of fees therefor.
- (3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of subsection (2), there shall be paid to him the price therefor as herein-after provided:—
- (a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

(4) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may, by order, authorise any person (hereinafter referred to as an authorised controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order such functions of control as may be provided therein and so long as such order is in force with respect to any undertaking or part thereof,—

(a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons in charge of the management of the undertaking, except in so far as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

(5) An order made under this section shall,—

(a) in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and

(b) in the case of an order directed to a specified individual be served on such individual—

(i) by delivering or tendering it to that individual, or

(ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood.

(6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made.

4. An order made under section 3 may confer powers and impose Imposition of duties on State Governments, etc. duties upon the Central Government or the State Government or officers and authorities of the Central Government or State Government, and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties.

5. The Central Government may, by notified order, direct that Delegation of powers. the power to make orders under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by—

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to a State Government,

~~as~~ may be specified in the direction.

6. Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act. Effect of orders inconsistent with other enactments.

7. (1) If any person contravenes any order made under Penalties. section 3—

(a) he shall be punishable—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which may extend to three years and shall also be liable to fine:

Provided that if the court is of opinion that a sentence of fine only will meet the ends of justice, it may, for reasons to be recorded, refrain from imposing a sentence of imprisonment; and

(b) any property in respect of which the order has been contravened or such part thereof as to the court may seem fit shall be forfeited to the Government:

Provided that if the court is of opinion that it is not necessary to direct forfeiture in respect of the whole or, as the case may be, any part of the property, it may, for reasons to be recorded, refrain from doing so.

(2) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

False statements.

8. If any person,—

(i) when required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Offences by companies.

9. (1) If the person contravening an order made under section 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.—*For the purposes of this section,—

(a) 'company' means any body corporate, and includes a firm or other association of individuals; and

(b) 'director' in relation to a firm means a partner in the firm.

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10. No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code.

11. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any magistrate of the first class specially empowered by the State Government in this behalf and for any presidency magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening any order made under section 3.

12. Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a court shall presume that such order was so made by that authority within the meaning of the Indian Evidence Act, 1872.

13. Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

14. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

15. (1) The following laws are hereby repealed.—

Repeals and savings.

(a) the Essential Commodities Ordinance, 1955;

(b) any other law in force in any State immediately before the commencement of this Act in so far as such law controls or authorises the control of the production, supply and distribution of, and trade and commerce in, any essential commodity.

(2) Notwithstanding such repeal, any order made or deemed to be made by any authority whatsoever, under any law repealed hereby and in force immediately before the commencement of this Act, shall, in so far as such order may be made under this Act, be deemed to be made under this Act and continue in force, and accordingly any appointment made, licence or permit granted

or direction issued under any such order and in force immediately before such commencement shall continue in force until and unless it is superseded by any appointment made, licence or permit granted or direction issued under this Act.

(3) The provisions of sub-section (2) shall be without prejudice to the provisions contained in section 6 of the General Clauses Act, X of 1897, which shall also apply to the repeal of the Ordinance or other law referred to in sub-section (1) as if such Ordinance or other law had been an enactment.

M. N. KAUL,

Secretary.